

United States
 1 1293
Circuit Court of Appeals
 For the Ninth Circuit.

OLAF HAUGE,

Plaintiff in Error,

vs.

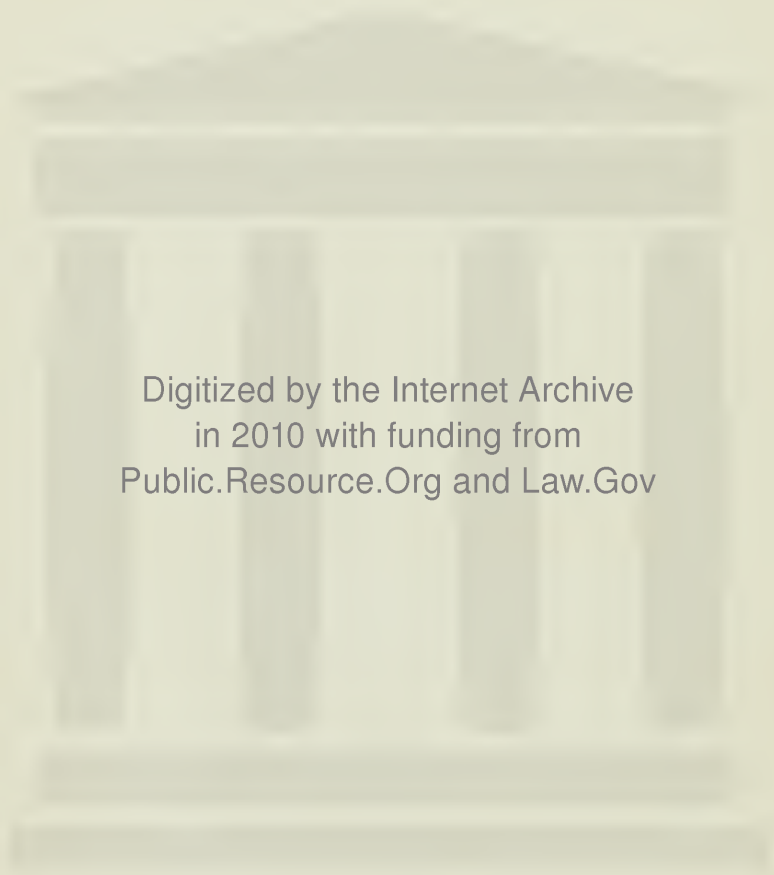
THE UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of the
 District of Oregon.

FILED
JUL - 2 1921
F. D. MONCKTON,
 CLERK.



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys of Record.

Mr. ERWIN J. ROWE, Panama Building, Portland, Oregon,
For the Plaintiff in Error.

Mr. LESTER W. HUMPHREYS, United States Attorney, District of Oregon, Portland, Oregon,
For the Defendant in Error.

Citation on Writ of Error.

United States of America,
District of Oregon,—ss.

To LESTER W. HUMPHREYS, United States Attorney for Oregon, GREETING:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the District of Oregon, wherein No. C-9101, Olaf Hauge, plaintiff in error, United States of America, defendant in error, *plaintiff in error and you are defendant in error*, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said Dis-

trict, this day of April 21, in the year of our Lord,
one thousand nine hundred and 21.

CHAS. E. WOLVERTON,
Judge. [1*]

State of Oregon,
County of Multnomah.—ss.

Due service of the within citation is hereby accepted in Multnomah County, Oregon, this 21st day of April, 1921, by receiving a duly certified copy thereof certified to by Erwin J. Rowe, attorney for plaintiff in error.

LESTER W. HUMPHREYS,
United States Attorney.

[Endorsed]: No. C-9101. United States District Court, District of Oregon. United States of America vs. Olaf Hauge. Citation on Writ of Error. U. S. District Court, District of Oregon. Filed Apr. 21, 1921. G. H. Marsh, Clerk.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

OLAF HAUGE,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,
Defendant in Error.

*Page-number appearing at foot of page of original certified Transcript of Record.

Writ of Error.

The United States of America,—ss.

The President of the United States of America, to
the Judge of the District Court of the United
States for the District of Oregon, GREETING:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the District Court before the Honorable Charles E. Wolverton, one of you, between The United States of America, plaintiff and defendant in error, and Olaf Hauge, defendant and plaintiff in error, a manifest error hath happened to the great damage of the said plaintiff in error, as by complaint doth appear; and we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, and, in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, California, within thirty days from the date hereof, in the said Circuit Court of Appeals to be then and there held; that the record and proceedings aforesaid, being then and there inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States of America should be done.

WITNESS the Honorable EDWARD DOUGLAS WHITE, Chief Justice of the Supreme Court

of the United States this 5th day of April, 1921.

[Seal]

G. H. MARSH,

Clerk of the District Court of the United States for
the District of Oregon.

By F. L. Buck,

Deputy. [2]

Service of the foregoing writ of error made this 5th day of April, 1921, upon the District Court of the United States for the District of Oregon, by filing with me, as clerk of said court, a duly certified copy of said writ of error.

G. H. MARSH,

Clerk of the District Court of the United States for
the District of Oregon.

By F. L. Buck,

Chief Deputy.

[Endorsed]: No. C-9101. In the U. S. Circuit Court of Appeals for the Ninth Circuit. Olaf Hauge, Plaintiff in Error, vs. The United States of America, Defendant in Error. Writ of Error. Filed April 5th, 1921. G. H. Marsh, Clerk, United States District Court, District of Oregon. By F. L. Buck, Deputy Clerk.

In the District Court of the United States for the
District of Oregon.

July Term, 1920.

BE IT REMEMBERED, That on the 28th day of October, 1920, there was duly filed in the District Court of the United States for the District of Ore-

gon, an indictment, in words and figures as follows,
to wit: [3]

In the District Court of the United States for the
District of Oregon.

UNITED STATES OF AMERICA

vs.

OLAF HAUGE,

Defendant.

**Indictment for Violation of Section 80 of the Fed-
eral Penal Code.**

United States of America,
District of Oregon,—ss.

The Grand Jurors of the United States of
America, for the District of Oregon, duly impaneled,
sworn, and charged to inquire within and for said
district, upon their oaths and affirmations, do find,
charge, allege, and present:

That Olaf Hauge, the defendant above named,
at Portland, in the State and District of Oregon
and within the jurisdiction of this court, on or about
the 17th day of June, 1920, in the District Court
of the United States for the District of Oregon,
was then and there under examination in said Dis-
trict Court of the United States for the District of
Oregon, in naturalization proceedings touching the
qualifications of said Olaf Hauge to be admitted as
a citizen of the United States, which said examin-
ation was then and there a proceeding under and by
virtue of the act of Congress relating to the natural-
ization of aliens and the said Olaf Hauge then and
there took an oath to answer truthfully all questions

which might be put to him touching his qualifications for admission to become a citizen of the United States, and the said Olaf Hauge then and there in the aforesaid naturalization proceedings, in the said District Court of the United States for the District of Oregon, and while so under oath to tell the [4] truth as aforesaid, did unlawfully, wilfully, knowingly, and feloniously falsely swear and assert that he, the said Olaf Hauge, on or about the 9th day of January, 1918, and at the time he filed his questionnaire with Local Board for Division No. 65, city of Chicago, State of Illinois, in the course of registration for military service, did not make or assert in said questionnaire any claim for exemption from the military service of the United States by virtue of his alienage, foreign citizenship, or the fact that he was not a citizen of the United States.

WHEREAS IN TRUTH AND IN FACT he, the said Olaf Hauge, did on or about the 8th day of January, 1918, file with Local Board for Division No. 65, City of Chicago, State of Illinois, a questionnaire, and in said questionnaire, so filed by the defendant, the said defendant claimed exemption as a resident alien, not an enemy, and claimed classification in Division "F" of Class V, and said defendant claimed exemption from military service because he was not a citizen of the United States and stated that he was willing to return to his native country and enter its military service and the said defendant, on the said 17th day of June, 1920, well knew that he had made said claims for exemption; contrary to the form of the statute in such case made and provided and

against the peace and dignity of the United States of America.

Dated at Portland, Oregon, this 28th day of October, 1920.

A true bill.

B. BULLWINKLE,
Foreman, United States Grand Jury
LESTER W. HUMPHREYS,
United States Attorney

[Endorsed]: A True Bill. B. Bullwinkle, Foreman Grand Jury. Filed, in open court, October 28, 1920. G. H. Marsh, Clerk. [5]

AND AFTERWARDS, to wit, on Tuesday, the 16th day of November, 1920, the same being the 13th judicial day of the regular November term of said court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge, presiding—the following proceedings were had in said cause, to wit: [6]

In the District Court of the United States for the District of Oregon.

No. C-9101—November 16, 1920

Indictment: Section 80 P. C.

THE UNITED STATES OF AMERICA

vs.

OLAF HAUGE.

Plea and Arraignment.

Now at this day come the plaintiff by Mr. A. F. Flegel, Jr., Assistant United States Attorney, and the defendant above named in his own proper person and by Mr. Arthur Dayton, of counsel. Whereupon, said defendant being duly arraigned upon the indictment herein, for plea thereto says he is not guilty. And thereupon, upon motion of plaintiff, it is ORDERED that this cause be and the same is hereby set for trial for Tuesday, February 8, 1921, at 10 o'clock A. M. [7]

AND AFTERWARDS, to wit, on Tuesday, the 29th day of March, 1921, the same being the 20th judicial day of the regular March term of said court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge, presiding—the following proceedings were had in said cause, to wit: [8]

In the District Court of the United States for the
District of Oregon.

No. C-9101—March 29, 1921.

Indictment: Section 80 P. C.

THE UNITED STATES OF AMERICA

vs.

OLAF HAUGE.

Order Fixing Time for Sentence.

Now at this day come the plaintiff by Mr. Lester

W. Humphreys, United States Attorney, and the defendant above named in his own proper person and by Mr. Erwin J. Rowe, of counsel, whereupon the jury impaneled herein come into court, answer to their names, and return to the Court their duly sealed verdict herein, in words and figures as follows, to wit:

“We, the jury, duly impaneled to try the above-entitled cause, do find the defendant, Olaf Hauge, guilty as charged in the indictment herein.

“Dated at Portland, Oregon, this 29th day of March, 1921.

“A. T. BLAIR,

“Foreman.”

—which verdict is received by the Court and ordered to be filed. Whereupon, it is ORDERED that said defendant appear before this Court for sentence on Tuesday, April 6, 1921. [9]

AND AFTERWARDS, to wit, on the 29th day of March, 1921, there was duly filed in said court a verdict, in words and figures as follows, to wit:
[10]

In the District Court of the United States for the District of Oregon.

THE UNITED STATES OF AMERICA

vs.

OLAF HAUGE,

Defendant.

Verdict.

We, the jury, duly impaneled to try the above-entitled cause, do find the defendant, Olaf Hauge, guilty as charged in the indictment herein.

Dated at Portland, Oregon, this 29th day of March, 1921.

A. T. BLAIR,
Foreman.

Filed March 29, 1921. G. H. Marsh, Clerk [11]

AND AFTERWARDS, to wit, on Tuesday, the 5th day of April, 1921, the same being the 26th judicial day of the regular March term of said court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge, presiding—the following proceedings were had in said cause, to wit: [12]

In the District Court of the United States for the District of Oregon.

No. C-9101—April 5, 1921.

Indictment: Section 80 P. C.

THE UNITED STATES OF AMERICA

vs.

OLAF HAUGE.

Sentence.

Now, at this day, come the plaintiff by Mr. Lester W. Humphreys, United States Attorney, and the de-

defendant above named in his own proper person and by Mr. Erwin J. Rowe, of counsel, whereupon this being the time set by the Court for passing sentence upon said defendant upon the verdict heretofore returned herein,—

IT IS ADJUDGED that said defendant do pay a fine of \$100.00, and that he be imprisoned in the county jail of Multnomah county, Oregon, for the term of six months, and that he stand committed until said sentence be performed or until he be discharged according to law. [13]

AND AFTERWARDS, to wit, on the 5th day of April, 1921, there was duly filed in said court a petition for writ of error, in words and figures as follows, to wit: [14]

In the District Court of the United States for the District of Oregon.

No. C-9101.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

OLAF HAUGE,

Defendant.

Petition for Writ of Error Returnable to United States Circuit Court of Appeals, Ninth Circuit.

Now comes Olaf Hauge, defendant herein, by his attorney Erwin J. Rowe, and says that on or about the 28th day of March, 1921, this Court entered judg-

ment herein in favor of the plaintiff and against the defendant, in which judgment and the proceedings had prior thereto and thereunder in this case certain errors were committed to the prejudice of this defendant, all of which will more fully appear in detail, from defendant's assignment of error which is filed with this petition.

WHEREFORE, this defendant prays that a writ of error may issue in his behalf out of the United States Circuit Court of Appeals for the Ninth Circuit for the correction of errors so complained of, and that a transcript of the record, proceedings, and papers in this case, duly authenticated, may be sent to the said Circuit Court of Appeals.

ERWIN J. ROWE,

Attorney for the Defendant,

Plaintiff in Error.

Address and Postoffice Address:

322-323 Washington Building.

Filed April 5, 1921. G. H. Marsh, Clerk. [15]

AND AFTERWARDS, to wit, on the 5th day of April, 1921, there was duly filed in said court an assignment of errors, in words and figures as follows, to wit: [16]

In the District Court of the United States for the
District of Oregon.

#C-9101.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

OLAF HAUGE,

Defendant.

Assignment of Errors.

Comes now the above-named defendant by his attorney, Erwin J. Rowe, and in connection with his petition for a writ of error, makes the following assignments of error which he avers occurred upon the trial of the cause:

I.

The Court erred in the admission of testimony on the part of the plaintiff therein of a preliminary petition for admission for citizenship by the defendant, which was alleged and asserted to have been signed by the defendant, and which set out that the defendant claimed therein that he had not claimed exemption from the military service at the time of making out his questionnaire; that the said petition was incompetent, irrelevant, and immaterial in so far that the plaintiff had failed to lay a foundation showing same to have been signed by plaintiff, and that further because it was not set out in the indictment, and formed no part of the charge of which the defendant was accused. Objection and exception taken and allowed.

II.

That the Court erred in the admission of the testimony of V. W. Tomlinson, United States Naturalization Commissioner for Oregon, a witness for the plaintiff, who testified that at a rehearing of the defendant's application for citizenship, that the defendant admitted that at the [17] original hearing he had testified that he the defendant had not claimed exemption from the military service in his questionnaire, that said testimony was incompetent, irrelevant, and immaterial, in so far as it had no bearing on the charge of which the defendant had been accused. Objection and exception taken and allowed.

III.

That the Court erred in refusing defendant's motion for a directed verdict; which said motion was based on the grounds that the plaintiff had failed to show that the question as to whether or not the defendant had claimed exemption from the military service on the grounds of being an alien was competent, relevant, or material.

IV.

That the Court erred in the rejection of the testimony of Mrs. Inga Hauge, wife of the defendant, who was present at the said trial and was duly called as a witness for the defendant; objection taken by plaintiff sustained, exception taken and allowed defendant, that the said Mrs. Hauge had she been allowed to testify would have testified: "That at the time a questionnaire was made out, that she was defendant's wife. That all the questions in the said

questionnaire were answered by her with the exception of when the defendant came to this country, on what boat, and to what port, and further that the defendant did not know what answers she made to the said questions therein contained, or what claims she had made for his exemption from the military service therein. And that she had not informed him as to what claims had been made therein." [18]

V.

That the defendant had present at the said trial the following persons: Mr. Rates, Mr. Guy, Mr. Shields, Mr. M. C. Hill, and Mr. O. Benson, that the said witnesses were duly called by the defendant, but the Court refused to allow them to testify, that had the said witnesses been allowed to testify, they would have testified that they lived in the same locality with the defendant, that they had known him for periods of from one to two years each, and that they know his general reputation in the locality in which he resided for truth and veracity, that his general reputation for truth and veracity in that locality was good. Objection and exception taken and allowed.

ERWIN J. ROWE,

Attorney for Defendant, Plaintiff in Error.

State of Oregon,

County of Multnomah,—ss.

Due service of the enclosed assignment of errors is hereby acknowledged in Multnomah County, Oregon, this 5th day of April, 1921, by receiving a

certified copy thereof, duly certified to by Erwin J. Rowe, attorney for defendant.

LESTER W. HUMPHREYS,

United States Attorney.

Filed April 5, 1921. G. H. Marsh, Clerk. [19]

AND AFTERWARDS, to wit, on Tuesday, the 5th day of April, 1921, the same being the 26th judicial day of the regular March term of said Court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge, presiding—the following proceedings were had in said cause, to wit: [20]

In the District Court of the United States for the District of Oregon.

No. C-9101.

April 5, 1921.

UNITED STATES OF AMERICA,

Defendant in Error, Plaintiff,

vs.

OLAF HAUGE,

Plaintiff in Error, Defendant.

Order Admitting Plaintiff in Error to Bail.

It appearing that a writ of error has been sued out in this case by the defendant, returnable to the United States Circuit Court of Appeals for the Ninth Circuit, from the judgment of this court made and entered on or about the 5th day of April, 1921, and it appearing that the United States Attorney

has no objections, it is ORDERED that the defendant be admitted to bail pending said writ of error in the sum of Two Thousand (\$2,000.00) Dollars, conditioned as the law directs.

CHAS. E. WOLVERTON,

Judge.

I have no objections to the above order.

LESTER W. HUMPHREYS,

United States Attorney.

Filed April 5, 1921. G. H. Marsh, Clerk. [21]

AND AFTERWARDS, to wit, on Tuesday, the 5th day of April, 1921, the same being the 26th judicial day of the regular March term of said Court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge, presiding—the following proceedings were had in said cause, to wit: [22]

In the District Court of the United States for the District of Oregon.

C-9101.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

OLAF HAUGE,

Defendant.

Order Allowing Writ of Error.

This 5th day of April, 1921, Olaf Hauge, defendant in the above-entitled action, by his attorney,

Erwin J. Rowe, and filed herein and presented to the Court his petition, praying for the allowance of a writ of error, and assignment of errors intended to be urged by him, praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit; and that such other and further proceedings may be had as may be proper in the premises.

On consideration thereof, the Court does allow the writ of error upon the defendant giving bond according to law in the sum of Two Thousand Dollars (\$2,000.00), which shall operate as a supersedeas bond.

CHAS. E. WOLVERTON.

Done in open court this 5th day of April, 1921.

ERWIN J. ROWE,

Attorney for Defendant, Plaintiff in Error, 322-323
Washington Building.

State of Oregon,
County of Multnomah,—ss.

Due service of the enclosed petition and also copy of order allowing writ and copy of order allowing [23] defendant to bail is hereby received by receiving a certified copy thereof duly certified to by Erwin J. Rowe, attorney for defendant.

Dated at Portland this 5th day of April, 1921.

LESTER W. HUMPHREYS,

United States Attorney.

Filed April 5, 1921. G. H. Marsh, Clerk. [24]

AND AFTERWARDS, to wit, on the 5th day of April, 1921, there was duly filed in said court a supersedeas bond on writ of error, in words and figures as follows, to wit: [25]

In the District Court of the United States for the District of Oregon.

C-9101.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

OLAF HAUGE,

Defendant.

Bail Bond Pending Writ of Error.

United States of America,
District of Oregon,
State of Oregon,
County of Multnomah,—ss.

We, Olaf Hauge, plaintiff in error, and Henry Tschopp and Henry Swales, as sureties, jointly and severally, acknowledge ourselves indebted to the United States of America in the sum of two thousand dollars (\$2,000.00), lawful money of the United States of America, to be levied on our and each of our goods, chattels, lands, tenements, and, etc., upon this condition.

WHEREAS, the said Olaf Hauge has sued out a writ of error from the judgment of the District Court of the United States of America, for the District of Oregon, in the case #9101, wherein the United States of America is plaintiff and Olaf

Hauge defendant, judgment having been entered against the defendant therein; for a review by the Circuit Court of Appeals for the Ninth Circuit.

Now, if the said Olaf Hauge shall appear and surrender himself in the District Court of the United States of America, for the District of Oregon, on and after the filing of the mandate of the United States Circuit Court of Appeals, and from time to time thereafter as he may be required to answer any further proceedings, and abide by and perform any judgment or order which may be had or rendered therein in [26] this case, and shall abide by and perform any judgment or order which may be rendered in the said Circuit Court of Appeals for the Ninth Circuit, and not depart from said District Court without leave thereof, then this obligation shall be void; otherwise to remain in fully force and effect.

Witness our hands and seals this — day of April, 1921.

OLAF HAUGE,

Plaintiff in Error.

HENRY TSCHOPP,

Surety.

HENRY SWALES,

Surety.

State of Oregon,

County of Multnomah,—ss.

I, Henry Tschopp, whose name is subscribed to the within undertaking as surety, being first duly sworn, on my oath depose and say: That I am a resident and real property holder within the State of

Oregon, that I am not a counselor or attorney at law, sheriff, or other officer of the court, and that I am worth property in the sum of Two Thousand Dollars (\$2,000.00), over and above all debts and liabilities and exclusive of property exempt from execution.

HENRY TSCHOPP.

Subscribed and sworn to before me this 4th day of April, 1921.

[Seal]

ERWIN J. ROWE,
Notary Public for Oregon.

My commission expires June 1, 1922. [27]

State of Oregon,
County of Multnomah,—ss.

I, Henry Swales, whose name is subscribed to the within undertaking as surety, being first duly sworn, on my oath depose and say: That I am a real property holder of the State of Oregon, that I am worth the sum of Two Thousand Dollars (\$2,000.00), over and above all debts and liabilities, and exclusive of property exempt from execution.

HENRY SWALES.

Subscribed and sworn to before me this 4th day of April, 1921.

[Seal]

ERWIN J. ROWE,
Notary Public for Oregon.

My commission expires June 1, 1921.

Bond approved this 5th day of April, 1921.

CHAS. E. WOLVERTON,

Judge.

LESTER W. HUMPHREYS,
United States Attorney.

State of Oregon,
County of Multnomah,—ss.

Due service of a copy of the within bail bond is hereby *accept* in Multnomah County, Oregon, this 5th day of April, by receiving a certified copy thereof, certified to by Erwin J. Rowe, attorney for defendant.

LESTER W. HUMPHREYS,
United States Attorney.

Filed April 5, 1921. G. H. Marsh, Clerk. [28]

AND AFTERWARDS, to wit, on the 25th day of April, 1921, there was duly filed in said court a bill of exceptions, in words and figures as follows, to wit: [29]

In the District Court of the United States for the District of Oregon.

No. C-9101.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

OLAF HAUGE,
Defendant.

Bill of Exceptions.

BE IT REMEMBERED, that heretofore, to wit, on the 28th day of March, in the year of our Lord one thousand nine hundred and twenty-one, at a stated term of the District Court of the United

States of America, for the District of Oregon, begun and holden at the City of Portland, Multnomah County, State of Oregon, before his Honor Charles E. Wolverton, District Judge of the United States, the issue being joined in the above-entitled cause between the parties came on for trial before the said Judge sitting with a jury; the United States of America, plaintiff, being represented by the Honorable Lester W. Humphreys, United States Attorney for Oregon, and the defendant Olaf Hauge being represented by attorney Erwin J. Rowe. Plaintiff offered in evidence the following testimony and records to maintain and prove his case, viz.:

Testimony of Mr. Norton, Clerk of the United States District Court for the District of Oregon, who testified that a term of the said court, to wit, on the seventeenth day of June, 1920, at a hearing in open court of defendant Olaf Hauge's petition for admission as a citizen of the United States of America by naturalization, the said defendant Olaf Hauge was called as a witness and was thereupon duly sworn, and that thereafter the said Olaf Hauge was questioned as to whether or not he had claimed exemption from the military service of the United States [30] at the time of making out his questionnaire on or about the 9th day of January, 1918; to which question the defendant testified that he had not claimed exemption on the said grounds in his questionnaire.

Plaintiff thereafter called as a witness V. W. Tomlinson, who testified that he is a naturalization

examiner, duly appointed, qualified, and acting for the United States of America; that five days before the hearing for admission of the defendant as a citizen, he received from the Adjutant-General of the Army information that the defendant had in his questionnaire claimed exemption from the military service on the grounds of being an alien; that he thereupon filed in the District Court of the United States for the District of Oregon a petition for a rehearing of the defendant's petition for naturalization, and that, in August, 1920, such rehearing was had in open court in the District Court of the United States for the District of Oregon, and that at such rehearing the defendant took the witness-stand in his own behalf and was thereupon sworn to tell the truth, and that the defendant at such rehearing, after having been sworn as a witness, testified that he had at the prior hearing on June 17, 1920, testified that he had not claimed exemption from the military service of the United States at the time of making out his questionnaire on the grounds of being an alien.

“Whereupon counsel for the defendant objected to the testimony as to the statements made by the defendant under oath at the rehearing, on the grounds that same was incompetent, irrelevant, and immaterial, which objection was there and then overruled, and the said witness was allowed to testify as above stated, to which ruling of the court the defendant then and there excepted, which exception was then and there allowed.” [31]

II.

The said witness, V. W. Tomlinson, Naturalization Examiner of the United States, being on the witness-stand, testified that he is the Naturalization Examiner in Charge at Portland, Oregon; that the defendant filed a petition for naturalization in the District Court of the United States for the District of Oregon; that thereafter and prior to the said 17th day of June, 1920, said witness, as Naturalization Examiner, sent to the defendant by mail a typewritten or printed blank form of questions to be answered by the defendant as an applicant for naturalization. That the said witness has the custody of the records of the Bureau of Naturalization, at Portland, Oregon. That prior to the said 17th day of June, 1920, the defendant wrote answers in the aforesaid blank form, sent him by the Naturalization Examiner and returned the same by mail to the said Naturalization Examiner; since which time the said Naturalization Examiner has had the said blank form, with the answers of the defendant written thereon, in his possession, and then had it in his possession.

“Whereupon, the witness was asked to produce said blank form with the written answers of the defendant, and the plaintiff then and there offered said blank form with the written answers of the defendant in evidence.”

Whereupon, defendant objected on the grounds that the said blank form with the written answers, was incompetent, irrelevant, and immaterial.

The Court then and there overruled said objec-

tion and said blank form with the written answers was received in evidence and was marked Plaintiff's Exhibit #1, to which ruling of the Court the defendant then and there excepted, which exception was then and there allowed. [32]

III.

“Plaintiff then offered in evidence a certified photostat copy of the defendant's questionnaire, which was marked Plaintiff's Exhibit No. 2, which disclosed that the defendant had made in said questionnaire claims for exemption from the military service of the United States on the grounds of being a resident alien, not an enemy, who claims exemption, and on the grounds that he was a person totally and permanently physically or mentally unfit for military service; and on the grounds that he was a man whose wife and children are mainly dependent on his labor for support”; and further.

“That the following questions and answers were contained in said questionnaire in series VII thereof as follows:

Q. Are you a citizen of the United States?

A. No.

Q. Do you claim exemption from military service because you are not a citizen? A. Yes.

Q. Are you willing to return to your native country and enter its military service? A. Yes.

Thereupon plaintiff rested its case.”

Whereupon counsel for the defendant moved the Court for a directed verdict, on the grounds that the plaintiff had failed to show that the question asked defendant at the hearing, to wit, whether or not the

defendant Olaf Hauge had claimed exemption from the military service on the grounds of being an alien, was a competent, relevant, or material question.

Thereupon the Court did then and there refuse [33] defendant's said motion, to which ruling the defendant did then and there propose exception to the said ruling of the Court, which exception was then and there allowed.

IV.

“The defendant then and there took the witness-stand in his own behalf, and testified that his wife had filled out his questionnaire, except as to when defendant came to this country, on what ship, and to what port of entry, that he did not discuss with his said wife claims for exemption made in said questionnaire. Defendant further testified that he personally took the questionnaire before the notary public, who administered to him the oath in the registrant's affidavit.”

“Whereupon defendant to maintain and prove his case called as a witness Mrs. Inga Hauge, wife of the defendant, who was then and there present, ready, willing, and able to testify, and who would have testified had she been allowed to as follows, to wit:

“That she was at the time a questionnaire was made out for the defendant, to wit, on the 9th day of January, 1918, she was the wife of the said defendant Olaf Hauge.”

“That all the questions in said questionnaire were answered by her, with the exception of as to when the defendant came to this country, on what ship, and to what port of entry. And further that the

defendant did not know what answers she made to the questions in the said questionnaire, or what claims were made for his exemption from the military service, and that she had not informed him as to what claims were made therein. [34]

“Whereupon counsel for plaintiff did then and there object to allowing the said Inga Hauge to testify, on the grounds that she was the wlf of the defendant and was therefore incompetent as a witness; and the said Judge did then and there refuse to allow said witness to testify.

“Whereupon counsel for the defendant did then and there propose his objection and exception to the said ruling of the Court which exception was then and there allowed.

V.

“Thereafter the defendant called as witnesses the following, to wit:

“Emil Straub, who testified that he knew the defendant, and that he knew his general reputation for truth and veracity in the community in which he resides, and that such reputation is good.

“Henry Swales, who testified that he knew the defendant, that he knows his general reputation for truth and veracity in the community in which he resides, and that such reputation is good.

“A. B. Benson, who testified that he knows the defendant and has known him for a year and a half, that he knows his general reputation for truth and veracity in the community in which he resides, and that such reputation is good.

“George Cole, who testified that he has known the

defendant for over a year; that he knows his reputation for truth and veracity in the community in which he resides and that such reputation is good.

“J. S. Theberge, who testified that he had known the defendant for over a year and a half, that he knows [35] defendant’s reputation for truth and veracity in the community in which he resides, and that such reputation is good.

“Thereupon attorney for the defendant in order to maintain and prove the issues of his case attempted to call as witnesses the following named witnesses, M. C. Hill, Mr. Rates, Mr. Guy, and Mr. Shields; who were present in the courtroom and who had they been allowed to testified that they had lived in the same locality as the defendant; that they had known the defendant for periods of from one to two years each, and that they knew the defendant’s general reputation for truth and veracity in the community in which he resides, and that such reputation of the defendant is good.

“Thereupon the Judge presiding at such hearing asked the defendant’s counsel if the testimony of the said witnesses would be to the same effect as that of the six witnesses to defendant’s reputation, as to his truth and veracity, who had just been called, to which defendant’s counsel responded that they would.

“Whereupon, the said Judge did then and there refuse to allow the said persons to testify, on the grounds that the defendant had already called six prior witnesses on the same point and that further accumulative testimony as to the defendant’s reputation for truth and veracity would not be permitted,

to which ruling of the Court the defendant then and there objected, on the grounds that the said Court did not have the right to limit the number of witnesses as to the defendant's general reputation for truth and veracity, and the defendant then and there save an exception, which exception was then and there allowed." [36]

Certificate of Judge to Bill of Exceptions.

And now, therefore, because the foregoing matters and things are not of record in this case, I, Charles E. Wolverton, United States District Judge for the District of Oregon, the Judge who tried the above-entitled cause in the above-entitled court, do certify that the foregoing bill of exceptions correctly states the proceedings had before me on the trial of the said cause so far as they are herein set out, and truly states the rulings of the Court upon the questions of law presented, and the exceptions taken by the defendant appearing therein were duly taken and allowed; that the said bill of exceptions were prepared and submitted within the time allowed, and is now signed, sealed, and settled as and for the bill of exceptions in said cause, and the same is hereby ordered to be made a part of the record in the above-entitled cause.

In witness whereof, I have hereunto set my hand this 25th day of April, 1921.

CHAS. E. WOLVERTON,
Judge.

O. K.—HUMPHREYS,
U. S. Attorney,

State of Oregon,
County of Multnomah,—ss.

Due and timely service of the foregoing, and the receipt of a duly certified copy thereof as required by law is hereby accepted in Multnomah County, Oregon, on this 21st day of April, 1921.

LESTER W. HUMPHREYS,
United States Attorney.

Filed April 25, 1921. G. H. Marsh, Clerk. [37]

**Certificate of Clerk U. S. District Court to Transcript
of Record.**

United States of America,
District of Oregon,—ss.

I, G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon, pursuant to the direction of the foregoing writ of error and in obedience thereto, do hereby certify that the foregoing pages numbered from 3 to 37, inclusive, constitute the transcript of record upon writ of error to review the judgment of the District Court of the United States for the District of Oregon in a cause in that court in which the United States of America is plaintiff and defendant in error and Olaf Hauge is defendant and plaintiff in error; that I have compared the foregoing transcript with the original record thereof and that the same is a true and complete transcript of the record of proceedings had in said court in said cause as the same appear of record and on file in my office

and in my custody. And I further certify that the cost of the foregoing transcript is \$8.50, and that the same has been paid by the said plaintiff in error.

IN WITNESS WHEREOF, I have hereunto affixed my hand and the seal of said court, at Portland, in said District, this 11th day of May, 1921.

[Seal] G. H. MARSH,
Clerk, United States District Court for the District
of Oregon.

[Endorsed]: No. 3685. United States Circuit Court of Appeals for the Ninth Circuit. Olaf Hauge, Plaintiff in Error, vs. The United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the District of Oregon.

Filed May 13, 1921.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

District Court of the United States for the District
of Oregon.

#C—9101.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

OLAF HAUGE,

Defendant.

**Order Extending Time to and Including May 25,
1921, to File Record and Docket Cause.**

Good cause being shown therefor, it is ordered that the time for plaintiff in error to file his transcript of record in the above-entitled cause with the clerk of the Circuit Court of Appeals of the United States of America for the Ninth Circuit, be and the same is hereby extended twenty days from the fifth day of May, 1921, to the twenty-fifth day of May, 1921.

Given under my hand this 21st day of April, 1921.

CHAS. E. WOLVERTON,

Judge.

I have no objections to above order.

LESTER W. HUMPHREYS,

United States Attorney.

State of Oregon,

County of Multnomah,—ss.

Due service of the foregoing order is hereby acknowledged by receiving a duly certified copy thereof from plaintiff in error's attorney.

LESTER W. HUMPHREYS,

United States Attorney.

[Endorsed]: #C—9101. District Court United States, District of Oregon. United States of America, Plaintiff, vs. Olaf Hauge, Defendant. Order Extending Time to File Transcript of Record. Filed Apr. 21, 1921. G. H. Marsh, Clerk.

No. 3685. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Subdivision 1 of Rule 16 Enlarging Time to and Including May 25, 1921, to File Record and Docket Cause. Filed May 13, 1921. F. D. Monckton, Clerk.